92-1675

Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER 1992 TERM

W. PAT CROW FORGINGS, INC.,

Petitioner,

V.

TRANSTECHNOLOGY CORPORATION,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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ATTORNEYS FOR PETITIONER

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QUESTIONS PRESENTED

1. Whether a district court, sitting in diversity, deprives a party of its right to procedural due process by levying, pursuant to the district court's inherent power, the punitive sanction of dismissal of a claim against the party, without affording the party notice and a hearing on the record?

2. Whether a district court, sitting in diversity, violates the doctrine set forth in Erie R. Co. v. Tompkins, and its progeny, by levying, pursuant to the district court's inherent power, a sanction against a party which denies the party its substantive state law right to recover attorneys' fees?

LIST OF PARTIES

The following are parties to the proceeding in the court whose judgment is sought to be reviewed or are current or former attorneys for one of the parties:

1. W. Pat Crow Forgings, Inc. - Petitioner.

2. TIC Investment Corp. - parent company of Petitioner.

3. Hon. John McBryde, formerly of the firm of McBryde & Green, then McBryde & Bennett - counsel for Petitioner in the district court below from June 20, 1985 through November 1989.

4. Bill F. Bogle, Roland K. Johnson, and Andrew D. Sims, of the firm of Harris, Finley, Creel & Bogle, P.C., now Harris, Finley & Bogle, P.C., Fort Worth, Texas - counsel for Petitioner in the district court below.

5. Bill F. Bogle and Andrew D. Sims of the firm of Harris, Finley & Bogle, P.C. - counsel for Petitioner on appeal.

6. TransTechnology Corporation - Respondent.

7. Joe B. Harrison and Mark W. Bayer of the firm of Gardere & Wynne, Dallas, Texas - counsel for Respondent in the

district court below from June 20, 1985 through October 4, 1985.

8. Daniel J. Sheehan, Lisa Williams, and Marc Culp of the firm of Sheehan, Young, Smith & Culp, now Sheehan, Young & Culp, Dallas, Texas - counsel for Respondent in the district court below.

9. Robert R. Bodoin of the firm of McLean & Sanders, Fort Worth, Texas - counsel for Respondent in the district court below.

10. Daniel J. Sheehan and Marc Culp, of the firm of Sheehan, Young & Culp - counsel for Respondent on appeal.

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1992

W. PAT CROW FORGINGS, INC.,

Petitioner,

V.

TRANSTECHNOLOGY CORPORATION,

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PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner herein prays that a Writ of Certiorari issue to the United States Court of Appeals for the Fifth Circuit to review

that Court's December 23, 1992 Judgment and Order in this proceeding.

OPINIONS BELOW

The Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit, from which review is sought, is not reported, but is attached as Appendix A to this Petition.

The Order of the Court of Appeals denying Petitioner's Petition For Rehearing is not reported, but is attached as Appendix B to this Petition.

The Order of the United States District Court for the Northern District of Texas dated February 12, 1992, from which Petitioner appealed, is not reported, but is attached as Appendix C to this Petition.

The Order Denying Attorneys' Fees of the United States District Court for the Northern District of Texas, from which

Petitioner appealed, is not reported, but is attached as Appendix D to this Petition.

The Judgment of the United States District Court for the Northern District of Texas, from which Petitioner appealed, is not reported, but is attached as Appendix E to this Petition.

The Order Correcting Judgment of the United States District Court for the Northern District of Texas, from which Petitioner appealed, is not reported, but is attached as Appendix F to this Petition.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered the Judgment, from which review is now sought, on December 23, 1992. A timely Petition For Rehearing was denied by the Court on January 20, 1993. Jurisdiction is now conferred upon this Court by 28 U.S.C. § 1254(1).

STATUTES AND RULES INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part:

> No person shall ... be deprived of ... property, without due process of law....

U.S. Const. amend. V.

The Federal Judiciary Act of 1789, as amended, provides:

> The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

28 U.S.C.A. §1652 (West 1966).

28 U.S.C. §1254, provides in pertinent part:

> Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the

> petition of any party to any civil or criminal case, before or after rendition of judgment or decree....

28 U.S.C.A. §1254(1) (West Supp. 1992).

28 U.S.C. §1332 provides in pertinent part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $50,000, exclusive of interest and costs, and is between -
>
> (1) citizens of different states....

28 U.S.C.A. §1332(a)(1) (West Supp. 1992).

STATEMENT OF THE CASE

This Petition arises out of the district court's denial of Petitioner W. Pat Crow Forgings, Inc.'s (hereinafter referred to as "Petitioner" or "Crow") substantive right to attorneys' fees under Texas law, without notice or an opportunity for hearing, as a sanction for Crow's alleged

failure to comply with the district court's order to segregate attorneys' fees. The following facts are relevant to the district court's order, and demonstrate that Crow was improperly sanctioned for its attorneys' honest and candid attempt to comply with that order.

On two occasions, Respondent TransTechnology Corporation (hereinafter referred to as "Respondent" or "TransTechnology") contracted with Crow to purchase frangible (breakable by explosives) nut forgings having very specific and unique physical and metallurgical properties. Pursuant to each contract, Crow was to make the forgings in accordance with the contract specifications, then ship the forgings to New Northern Engineering, Inc. in California, where the forgings would be machined into nuts, and would undergo heat treatment,

electro-discharge machining, and electro-polishing. TransTechnology would then sell the finished product, frangible nuts, to United Space Boosters, Inc., general contractor to NASA. Ultimately, the nuts were to be used to secure the solid fuel tanks on the NASA space shuttle to the mobile launch vehicle. Immediately prior to liftoff the nuts would be exploded, allowing the space shuttle to be launched.

The two contracts pursuant to which TransTechnology ordered frangible nut forgings from Crow are designated in this Petition as "Purchase Order 49047" and "Purchase Order 53528." Pursuant to Purchase Order 49047, TransTechnology ordered 151 frangible nut forgings and fully paid Crow upon delivery of the forgings. Pursuant to the second contract, Purchase Order 53528, Crow again delivered forgings

to TransTechnology, but TransTechnology withheld payment of $102,670 because of alleged deficiencies in the forgings Crow delivered pursuant to the first contract, Purchase Order 49047.

Crow filed suit against TransTechnology for breach of contract on June 20, 1985, in the United States District Court for the Northern District of Texas, Fort Worth Division. Jurisdiction in the district court was proper pursuant to 28 U.S.C.A. §1332(a)(1) (West Supp. 1991). TransTechnology responded by asserting numerous defenses and affirmative defenses to Crow's claim on Purchase Order 53528, including breach of contract of both contracts and failure of consideration as to both purchase orders. TransTechnology also asserted a counterclaim against Crow for breach of contract and deceptive trade

practices for Crow's delivery of allegedly defective forgings pursuant to Purchase Order 49047.

In the Joint Pretrial Order dated March 5, 1991 (after approximately five and one-half years of heated litigation), TransTechnology conditionally stipulated that Crow was entitled to recover on Purchase Order 53528. This was not an unconditional stipulation of liability or a confession of judgment. After this stipulation, TransTechnology continued to assert, by pleadings, its alleged defenses and affirmative defenses. TransTechnology never amended its pleadings to delete its defenses and affirmative defenses to Crow's action and did not amend its answers to interrogatories in relevant part until March 26, 1991. Further, the pretrial order containing the conditional stipulation on

Purchase Order 53528 was not signed by the district court until October 7, 1991, and was not entered as an order of the court until on or about April 14, 1992, after trial on the merits. Consequently, throughout the trial, Crow had no assurance that TransTechnology was legally and absolutely foreclosed from claiming that the forgings supplied pursuant to Purchase Order 53528 were defective, and Crow had to continue to be prepared to defeat TransTechnology's pleaded affirmative defenses to Crow's claim on Purchase Order 53528, through and including the trial of the cause in October 1991.

After TransTechnology conditionally stipulated to liability on Purchase Order 53528, the district court bifurcated TransTechnology's counterclaim on Purchase Order 49047 from trial of the attorneys'

fees issues, and realigned TransTechnology as the plaintiff and Crow as the defendant. After a trial on the merits lasting over two weeks, the jury reached a verdict on October 23, 1991, in which it found every issue in favor of Crow.

After trial of the merits, the district court ordered Crow to segregate the attorneys' fees incurred by it in prosecuting its claim on Purchase Order 53528, which included overcoming TransTechnology's affirmative defenses, from the fees incurred by it in defending against TransTechnology's counterclaim on Purchase Order 49047. Overcoming TransTechnology's affirmative defenses and defending against TransTechnology's counterclaim both involved the same underlying issues -- whether the forgings were defective. The district court also ordered Crow to submit evidence of its

attorneys' fees by affidavit prior to receiving evidence regarding the necessity of segregation of attorneys' fees. As ordered by the district court, on February 27, 1992, Crow filed the affidavits of John McBryde (Crow's attorney from June 20, 1985 through November 16, 1989), and Bill F. Bogle (Crow's attorney from November 16, 1989 to the present). The affidavits contained, through incorporation by reference of attorneys' fee statements on file, an itemization of the service provided, the time spent on the service, and the charge for the service regarding the legal work performed pursuant to Purchase Order 53528, and witnesses McBryde and Bogle also explained in great detail the difficult task they experienced with respect to attempting to segregate attorneys' fees incurred by Crow in prosecuting its claim on

Purchase Order 53528 from the fees incurred by Crow in defending against TransTechnology's counterclaim on Purchase Order 49047. Nevertheless, both witnesses McBryde and Bogle, in their affidavits, did segregate the attorneys' fees to the greatest extent possible.[1]

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[1]TransTechnology's affirmative defenses to Crow's claim on Purchase Order 53528 were based on the same allegations as its counterclaim on Purchase Order 49047. Thus, to a large extent, Crow necessarily incurred the same fees in prosecuting its claim on Purchase Order 53528, as in defending against TransTechnology's claim on Purchase Order 49047.

Crow's attorneys' inability to segregate fees in the manner, or to the extent that the district court apparently contemplated, was simply not possible in this case. As has been recognized by other courts:

> To divide the attorney's time by a jury issue or by complaint count would be transparently false precision. The work of lawyers and the progress of a case through trial is not an Orwellian assembly line of discreet jobs of quantifiable time and purpose. Lawyers should be compensated the highest for

On March 6, 1992, approximately eight days after receiving the McBryde and Bogle affidavits, without notice or hearing, the district court, sua sponte, denied Crow the right to recover attorneys' fees to "vindicate its authority."[2] Prior to

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> thinking. If, instead of appraising the value of critical analysis and effective effort, we sink to valuing lawyers by minutes or pages, we denigrate real counsel and elevate weak lawyering. The absorption in the detail of lawyers' fees is a triumph of technique over purpose.
>
> In a case of this complexity, intensity, and length, segregation of issues may well be impossible, and it is not required.

Stine v. Marathon Oil Co., 753 F.Supp. 202, 204 (S.D. Tex. 1990).

[2]The sanctions in this case were apparently imposed pursuant to the district court's inherent power. The district court did not state its authority for imposing sanctions on Crow, but it does not appear that the court imposed sanctions on Crow pursuant to Rule 11 of the Federal Rules of Civil Procedure, or pursuant to 28 U.S.C.

severely sanctioning Crow by denying Crow its substantive state law right to recover attorneys' fees, the district court did not notify Crow that it had allegedly engaged in conduct worthy of punishment and did not give Crow the opportunity to defend itself.

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§1927.

To impose a Rule 11 sanction, a court must find that the party or its attorney signed a pleading or motion that was not well-grounded in fact, not warranted by existing law, or did not present a good faith argument for the extension, modification, or reversal of existing law, or that the pleadings were interposed for an improper purpose, or to cause unnecessary delay or needless increase in the cost of litigation. Fed. R. Civ. P. 11. The district court made no such findings and the constituent elements of a Rule 11 violation are not applicable to the affidavits filed by witnesses McBryde and Bogle.

The district court could not sanction Crow pursuant to 28 U.S.C. §1927 because that statute only applies to attorneys. Browning v. Cramer, 931 F.2d 340 (5th Cir. 1991).

The court of appeals' reliance, albeit incorrect, on this Court's holding in Chambers v. NASCO, Inc., 501 U.S. ____, 111 S.Ct. 2123 (1991), also indicates that the sanction in this case was imposed pursuant to the district court's inherent power.

Further, the district court received no evidence to support its sanctions order. Crow had not been previously sanctioned or warned by the district court, and no motion for sanctions was ever filed against Crow during the entire course of the litigation.

REASONS FOR GRANTING THE WRIT

I. THE FIFTH CIRCUIT'S AFFIRMANCE OF THE DISTRICT COURT'S SANCTIONS ORDER (WHICH WAS LEVIED AGAINST PETITIONER WITHOUT NOTICE AND HEARING, AND THEREFORE VIOLATED PETITIONER'S PROCEDURAL DUE PROCESS RIGHTS) IS IN CONFLICT WITH THIS COURT'S DECISIONS IN CHAMBERS V. NASCO, INC., 501 U.S. ___, 111 S.Ct. 2123 (1991), ROADWAY EXPRESS, INC. V. PIPER, 447 U.S. 752 (1980), SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES V. ROGERS, 357 U.S. 197 (1958), AND THE DECISIONAL LAW IN THE THIRD CIRCUIT.

Pursuant to the United States Constitution, no person may be deprived of property without due process of law. U. S. Const. amend. V; Societe Internationale Pour Participations Industrielles v. Rogers, 357 U.S. 197 (1958); Eash v. Riggins Trucking, Inc., 757 F.2d 557 (3rd Cir. 1985). The Eash court held that the imposition of a monetary sanction without affording prior notice and an opportunity to be heard violated due process. Id. at 570. This Court has also held that before attorney's fees may be awarded as a sanction, pursuant to a court's inherent power, other than in emergency cases, the party must receive notice and an appropriate hearing. Chambers, 501 U.S. at ___; 111 S.Ct. at 2139. Further, with respect to sanctions imposed pursuant to the inherent power of the court, like "other sanctions, attorney's

fees certainly should be not be assessed lightly or without fair notice and an opportunity for hearing on the record." Roadway Express, Inc. v. Piper, 447 U.S. 752, 767-68 (1980) (emphasis added). Thus, to the extent the district court's sanction order constituted an imposition of monetary sanctions, Petitioner was entitled to notice and a hearing on the record.

Because the district court's order is punitive, Crow should have been afforded a high level of procedural due process. It is generally accepted that a higher standard of due process protection is required where the purpose of the sanction is to punish rather than compensate. Media Duplication Services, Ltd. v. HDG Software, Inc., 928 F.2d 1228, 1238 (1st Cir. 1991). In Societe, this Court reversed the dismissal of a claim, pursuant to Rule 37 of the

Federal Rules of Civil Procedure, for failure to comply with a pretrial discovery order. Societe, 357 U.S. at 210-12. The Societe case is closely analogous to the case at bar, in that the district court in this case imposed sanctions pursuant to its inherent power which dismissed Petitioner's claim for attorneys' fees. In fact, the district court's order states, in part:

> Accordingly, it is hereby ORDERED that Defendant Crow SHALL TAKE NOTHING BY WAY OF ITS CLAIM FOR ATTORNEYS' FEES.

As this Court held in Roadway Express, "[t]he due process concerns posed by an outright dismissal are plainly greater than those presented by assessing counsel fees against lawyers." Roadway Express, 447 U.S. at 767 n.14. Thus, while Petitioner was entitled to notice and hearing even if the district court's sanction order is viewed solely as an imposition of monetary

sanctions, Petitioner was undoubtedly entitled to notice and a hearing on the record prior to the district court's imposition of sanctions which constituted an outright dismissal of Petitioner's attorneys' fees claim.[3] See Roadway Express, 447 U.S. at 767-68

In its opinion, the court of appeals below failed to discuss the issue of whether Petitioner was entitled to notice and hearing prior to the imposition of severe and punitive sanctions by the district court, and whether Petitioner's right to procedural due process had been violated. Because Petitioner was denied procedural due

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[3]Crow's claim for attorneys' fees was severed from, and was to be tried separately from its claim on Purchase Order 53528 and TransTechnology's counterclaim on Purchase Order 49047. Thus, the district court's denial of Crow's claim for attorneys' fees, in effect, was the death penalty sanction of dismissal of Crow's attorneys' fees claim.

process, the severe sanction levied against Petitioner must be reversed.

II. THE FIFTH CIRCUIT'S AFFIRMANCE OF THE DISTRICT COURT'S SANCTIONS ORDER (WHICH DENIED PETITIONER ITS SUBSTANTIVE STATE LAW RIGHT TO RECOVER ATTORNEYS' FEES) IS IN CONFLICT WITH THIS COURT'S DECISIONS IN ERIE R. CO. V. TOMPKINS, 304 U.S. 64 (1938), ALYESKA PIPELINE SERVICE CO. V. WILDERNESS SOC'Y, 421 U.S. 240 (1975), AND PEOPLE OF SIOUX COUNTY V. NATIONAL SUR. CO., 276 U.S. 238 (1928).

Although a district court, sitting in diversity, may impose sanctions which, in effect, shift responsibility with respect to attorneys' fees, it may not do so if the underlying effect of the sanction creates a conflict between state law and federal substantive law or practice. See Chambers v. NASCO, Inc., 501 U.S. ____, 111 S.Ct.

2123, 2137 (1991). This Court in Chambers recognized that the limitation on a court's inherent power "applies only to fee-shifting rules that embody a substantive policy, such as a statute which permits a prevailing party in certain classes of litigation to recover fees." Chambers, 111 S.Ct. at 2136; see People of Sioux County v. National Sur. Co., 276 U.S. 238 (1928).[4]

It is the policy of the State of Texas for a party to recover reasonable attorneys' fees in a suit by that party on a written contract, as in the case at bar. This state policy has been codified by statute. Tex. Civ. Prac. & Rem. Code Ann. §38.001(8) (Vernon 1986); see Caldwell & Hurst v.

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[4]In Alyeska Pipeline Service Co. v. Wilderness Soc'y, 421 U.S. 240, 259 n.31 (1975), this Court recognized that, in a diversity case, state law affording or denying the right to attorneys' fees, and which reflects a substantial policy of the state, should be followed.

Myers, 714 S.W.2d 63, 65 (Tex. App. -- Houston [14th Dist.] 1986, writ ref'd n.r.e.) (the award of reasonable attorneys' fees to a plaintiff recovering on a valid claim founded on a written contract preceded by proper presentment of the claim is mandatory).

In the case at bar, Petitioner had a substantive state law right to recover reasonable attorneys' fees pursuant to a Texas statute. Under the Federal Judiciary Act of 1789, as amended, the district court was required to apply Texas law in determining Petitioner's attorneys' fees claim. 28 U.S.C.A. §1652 (West 1966); Corrosion Rectifying Co. v. Freeport Sulphur Co., 197 F.Supp. 291 (S.D. Tex. 1961) (issue of plaintiff's right to recover attorneys' fee is substantive for Erie purposes). The district court, in imposing sanctions

pursuant to its inherent power, denied Petitioner its substantive state law right to recover attorneys' fees, the underlying effect of which created a conflict between the substantive state law of Texas and the federal practice used by the district court.[5] This conflict is impermissible

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[5]The case at bar is fundamentally different from cases in which attorneys' fees are assessed against a party as a sanction. In the case at bar, no attorneys' fees were assessed by the district court. In contrast, the district court denied Petitioner's substantive right to attorneys' fees under Texas law, as a sanction. This is contrary to Texas law. Caldwell & Hurst, 714 S.W.2d at 65 ("while the trial court has discretion in fixing the amount of attorneys' fees, it does not have discretion in denying attorneys' fees entirely...."). The obvious effect of the district court's sanction order was to have Crow's state law attorneys' fees claim fall under the American rule. The American rule prohibits federal courts from awarding attorneys' fees in the absence of a statute or contract. See Alyeska, 421 U.S. at 258-59. Thus, the district court below, sitting in diversity, in essence, applied federal common law to Petitioner's substantive state law attorneys fees' claim and disregarded Texas law regarding the recovery of attorneys' fees.

under this Court's holdings, and the district court erred in denying Petitioner its substantive state law right to recover attorneys' fees by imposing sanctions.

Further, in the case at bar, the second of the twin aims of Erie R. Co. -- the "avoidance of the inequitable administration of the laws" -- is implicated. See Erie R. Co. v. Tompkins, 304 U.S. 64 (1938); Hanna v. Plummer, 380 U.S. 460, 468 (1965). First, under Texas law, Petitioner was not required to segregate its attorneys' fees, and the district court misapplied Texas law in ordering the segregation of attorneys' fees prior to receiving evidence regarding the necessity of such segregation. Flint & Associates, Inc. v. Intercontinental Pipe & Steel, Inc., 739 S.W.2d 622, 625 (Tex. App.

This is impermissible under the Erie doctrine.

-- Dallas 1987, writ denied). Secondly, under Texas law, it was entirely proper for Petitioner to put on evidence of all of its attorneys' fees, and Petitioner would not have been sanctioned for doing so in a Texas court. Under Texas law, assuming that Petitioner did not segregate attorneys' fees to the greatest extent possible, the district court had the duty to determine a reasonable fee to be awarded Crow after having received evidence of all the fees. Flint & Associates, 739 S.W.2d at 625. The Texas Supreme Court, in Stewart Title Guaranty Co. v. Sterling, 822 S.W.2d 1 (Tex. 1991), recently stated:

> Evidence of unsegregated attorney's fees is more than a scintilla of evidence of segregated attorney's fees, i.e. what a reasonable attorney's fee would be for the entire case indicates what the segregated amount should be.

Id. at 12. Once the district court had before it evidence of all attorneys' fees, the court then had the duty to make an award of a reasonable fee, irrespective of whether segregation was required. Indeed, "[w]hile the trial court has discretion in fixing the amount of attorney's fees, it does not have discretion in denying attorney's fees entirely under Article 2226."[6] Caldwell & Hurst, 714 S.W.2d at 65 (emphasis added).

Thus, the district court's sanction against Petitioner was, in a very real sense, an inequitable administration of the applicable Texas substantive law, which violated the fundamental rule that federal district courts sitting in diversity must

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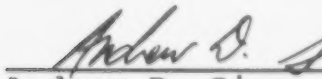
[6]Former Article 2226 is now codified at Tex. Civ. Prac. & Rem. Code Ann. §38.001 (Vernon 1986).

apply the state substantive law. See Erie R. Co., 304 U.S. at 64.

CONCLUSION

Petitioner herein prays that a writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit to review that court's December 23, 1992 judgment and order in this proceeding; and for such other and further relief, both general and special, at law and in equity, to which Petitioner may be justly entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that three copies of this instrument was served on the attorneys of record of all parties in this cause on April 16, 1993, by hand delivery or by mailing same, in an envelope duly addressed and with first-class postage prepaid, in the United States mail, to:

Daniel J. Sheehan, Esq.
Marc Culp, Esq.
Sheehan, Young & Culp
3102 Oak Lawn, Suite 950
Dallas, Texas 75219

Andrew D. Sims

Andrew D. Sims

APPENDIX A

5 pages

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S.COURT OF APPEALS
FILED
DEC 23 1992

RICHARD E. WINDHORST, JR.
CLERK

No. 92-1323

TRANSTECHNOLOGY CORPORATION,

Plaintiff-Appellee,

versus

W. PAT CROW FORGINGS, INC.,

Defendant-Appellant.

Appeals from the United States District Court for the Northern District of Texas

(CA4-85-358-K)

Before GOLDBERG, JOLLY, and WIENER, Circuit Judges.

PER CURIAM:*

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

In this appeal, the sole issue is whether the district court erred when it denied the plaintiff, W. Pat Crow Forgings, Inc., all of its attorney's fees because Crow failed to segregate its fees incurred in prosecuting its claim from the fees incurred in defending against the defendant's counter claim. Finding that the district court committed no reversible error, we affirm.

In this diversity case, Texas law governs whether the plaintiff can recover attorney's fees. The general rule in Texas is that the plaintiff in a contract action can recover the attorney's fees he incurs while prosecuting his claim, but he cannot recover attorney's fees he incurs while defending against a counterclaim. See Tex. Civ. Prac. & Rem. Code Ann. § 38.001 (West 1986); Flint & Assoc. v. Intercon. Pipe & Steel, 739 S.W.2d 622, 624 (Tex. Ct. App.

1987). The plaintiff can, however, recover the attorney's fees associated with defending against a counterclaim "if they arise out of the same transaction and are so interrelated that their prosecution or defense entails proof or denial of essentially the same facts." Id., at 624-625.

The district court found, inter alia, that "proof of Crow's claims rests upon different facts," and that "the record indicates that the legal work attributable to Crow's claim is easily distinguished from that required to prepare a defense to TransTechnology's counterclaim." Based on these findings, the district court explicitly ordered Crow to "segregate its attorney's fees." We cannot say that the district court erred when it ordered Crow to segregate its attorney's fee; Crow's claim and TransTechnology's counterclaim are based

on different contracts and involve different facts.

Instead of complying with the district court's explicit order, Crow submitted affidavits from its attorneys claiming they could not segregate their fees. The district court found that Crow made no attempt to comply with its order. The record will support this view of the facts. Although the district court had already found that it was possible to segregate attorney's fees, the affidavits argue that they cannot segregate those fees. It is a reasonable assessment of Crow's affidavits to say that they challenge the court's order instead of complying with it.

Concluding that Crow's conduct deliberately inhibited the district court's duty to determine the reasonableness of Crow's claim for attorney's fees, the district court denied Crow's entire claim

for attorney's fees. In this respect, the court did not exceed its authority. See Chambers v. Nasco, Inc., ____ U.S. ____, 111 S.Ct. 2123 (1991).

Thus, after reviewing all of the district court's actions, we hold that the district did not commit reversible error. The judgment of the district court is therefore

A F F I R M E D.

APPENDIX B

2 pages

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U.S.COURT OF APPEALS
FILED
JAN 20 1993

RICHARD E. WINDHORST, JR.
CLERK

No. 92-1323

TRANSTECHNOLOGY CORP.,

Plaintiff-Appellee,

versus

W. PAT CROW FORGINGS, INC.,

Defendant-Appellant.

Appeals from the United States District Court for the Northern District of Texas

ON PETITION FOR REHEARING

(January 20, 1993)

Before GOLDBERG, JOLLY, and WIENER, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

/S/ E. Grady Jolly
United States Circuit Judge

REHG-4

CLERK'S NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE

APPENDIX C

3 pages

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
Northern District of Texas
FILED
FEB 12 1992

NANCY DOHERTY, CLERK
By: /S/ B. Garner
Deputy

TRANSTECHNOLOGY CORPORATION,	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 4-85-358-K
W. PAT CROW FORGINGS, INC.,	§	
Defendant.	§	

ORDER

In conformance with the Court's Memorandum Opinion, entered this same date, it is hereby ORDERED that Plaintiff TransTechnology Corporation's Motion for Submission of Attorneys' Fees Issues is GRANTED.

It is further ORDERED that Defendant W. Pat Crow Forgings shall segregate its attorneys' fees.

It is further ORDERED that Defendant shall have ten days after receiving notice of this Order to submit affidavits evaluating the work performed pursuant to Purchase Order 53528. Such affidavits shall verify the reasonableness of fees incurred and may be supported by relevant exhibits.

It is also ORDERED that Plaintiff shall have leave to rebut the reasonableness of any fees incurred pursuant to Purchase Order 53528. Plaintiff shall have ten days after receiving notice of Crow's affidavits to proffer rebuttal evidence.

IT IS SO ORDERED.

Certified a true copy of an instrument on file in my office on 5-12-92 NANCY DOHERTY, Clerk, U.S. District Court, Northern District of Texas
By: /S/ Pam Murphy Deputy

SIGNED this 12th day of February, 1992.

/S/ David O. Belew, Jr.
DAVID O. BELEW, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX D

4 pages

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
Northern District of Texas
FILED
MAR 6 1992

NANCY DOHERTY, CLERK
By: /S/ Barbara Garner
Deputy

TRANSTECHNOLOGY CORPORATION,	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 4-85-358-K
W. PAT CROW FORGINGS, INC.,	§	
Defendant.	§	

ORDER DENYING ATTORNEYS' FEES

On February 12, 1992, this Court entered a Memorandum Opinion and Order granting Plaintiff TransTechnology Corporation's motion to submit the attorneys' fees issue to the Court. The Court's Order, directed Defendant W. Pat Crow Forgings, Inc. ("Crow") to segregate its attorneys' fees and submit affidavits evaluating the work performed pursuant to

purchase order 53528. Crow was further ordered that it must verify the reasonableness of the segregated attorneys' fees. For the reasons that follow, the Court finds that Crow has failed to comply with the Court's Memorandum Opinion and Order.

The Court's Order determined that the attorneys' fees issue would be tried to the Court. The Court further ordered Crow to segregate its reasonable attorneys' fees. On February 27, 1992, Crow filed Affidavits that purport to comply with the explicit instructions contained in the Memorandum Opinion and Order. Crow's Affidavits indicate that no effort was made to comply

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By: /S/ Pam Murphy Deputy

with the Court's Order. Crow's conduct deliberately inhibits the Court's duty to determine the reasonableness of attorneys' fees. Based upon the Affidavits submitted, the Court finds that Crow willfully disobeyed the Court's February 12, 1992 Order and, therefore, the Court must fashion an appropriate remedy to vindicate its authority.[1]

Accordingly, it is hereby ORDERED that Defendant Crow SHALL TAKE NOTHING BY WAY OF ITS CLAIM FOR ATTORNEYS' FEES.

IT IS SO ORDERED.

---

[1]While the Court is of the opinion the conduct of Crow's attorneys in not segregating the attorneys' fees was a willful disobeyance of the Court's February 12, 1992 Order that frustrates its ability to discharge its judicial duty and, as such, deserves severe sanctions; the Court nevertheless chooses not to impose any such sanctions.

SIGNED this 6th day of March, 1992.

/S/ David O. Belew, Jr.
DAVID O. BELEW, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX E

3 pages

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
Northern District of Texas
FILED
MAR 25 1992

NANCY DOHERTY, CLERK
By: /S/ Barbara Garner
Deputy

TRANSTECHNOLOGY CORPORATION,	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. 4-85-358-K
W. PAT CROW FORGINGS, INC.,	§	
Defendant.	§	

JUDGMENT

This action came on for trial before the Court and a Jury, Honorable David O. Belew, Jr., United States District Judge presiding, and the issues having been duly

tried and the Jury having rendered its verdict;

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By: /S/ Pam Murphy Deputy

It is hereby ORDERED and ADJUDGED that the Plaintiff TransTechnology Corporation shall take nothing by way of its claims against Defendant W. Pat Crow Forgings, Inc.

It is Further ORDERED and ADJUDGED that pursuant to a pretrial stipulation between the parties, W. Pat Crow Forgings Inc. shall have and recover from TransTechnology Corporation the sum of One Hundred Two Thousand Six Hundred Seventy Dollars ($102,670.00), including prejudgment interest at the rate of 10% per annum from June 20, 1985 to the date of this Judgment, and post-judgment interest at the rate of

4.58% per annum from the date of this Judgment until paid.

It is further ORDERED that all costs of court, less attorneys' fees, are taxed against Plaintiff TransTechnology Corporation.

It is further ORDERED that the Clerk of the Court shall close the above-styled and numbered case. All pending motions in this case are hereby rendered MOOT by this Judgment.

IT IS SO ORDERED.

SIGNED this 25th day of March, 1992.

/S/ David O. Belew, Jr.
DAVID O. BELEW, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX F

2 pages

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT
Northern District of Texas
FILED
APR 9 1992

NANCY DOHERTY, CLERK
By: /S/ BG
Deputy

TRANSTECHNOLOGY CORPORATION,	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. CA4-85-358-K
W. PAT CROW FORGINGS, INC.,	§	
Defendant.	§	

ORDER CORRECTING JUDGMENT

On this day came on for consideration Plaintiff's Motion to Correct Judgment and the Court, having considered the motion, is of the opinion and finds that it should be GRANTED;

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By: /S/ Pam Murphy Deputy

Accordingly, it is hereby ORDERED that Plaintiff's Motion to Correct Judgment shall be GRANTED;

IT IS FURTHER ORDERED that the judgment entered in this matter on March 25, 1992, shall be corrected to reflect an award to Defendant W. Pat Crow Forgings, Inc., in the amount of $102,670.00 plus prejudgment interest in the amount of $46,594.94.

SIGNED this 9th day of April, 1992.

/S/ David O. Belew, Jr.
Honorable David O. Belew, Jr.